Normandie on the Park, Inc. *and* Local 24, Hotel Employees and Restaurant Employees International Union, AFL–CIO. Case 7–CA–34148

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by Local 24, Hotel Employees and Restaurant Employees International Union, AFL–CIO, the Union, on January 25, 1993, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing against Normandie on the Park, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.[1]

On June 7, 1993, the General Counsel filed a Motion to Transfer Case to the Board and for Default Summary Judgment with the Board. On June 9, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional Attorney, by letter dated March 24, 1993, notified the Respondent that unless an answer was received by April 6, 1993, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

[1] The charge and complaint were served by depositing same in the mail to the Respondent's place of business. The complaint was returned to the Regional Office with a notice from the U.S. Postal Service that the "Authorized time for Forwarding has expired." Service by mail on the Respondent's resident agent at the address on file with the State of Michigan was also returned. Clearly, the Respondent cannot avoid the processes of the Board by failing to provide a means of obtaining its mail. Service of these documents was properly accomplished by deposit in the mail to the Respondent's last known address. *Mondie Forge Co.*, 309 NLRB No. 82 fn. 1 (Nov. 25, 1992). Moreover, a respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. Id.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business at 6525 Second Avenue, Detroit, Michigan, has been engaged in the operation of a restaurant/bar providing food and beverages to the public. The Respondent's Detroit place of business is the only facility involved in this proceeding.

During calendar year 1992, in the course and conduct of its business operations, the Respondent had gross revenues in excess of $500,000. During the same period of time, the Respondent purchased and caused to be transported and delivered to its Detroit place of business alcoholic beverages valued in excess of $50,000 which were transported and delivered to the Detroit place of business from the Michigan Liquor Control Commission, a State of Michigan agency, which had received the alcoholic beverages directly from points located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit and the Union's Representative Status*

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All chefs, night cooks, broilers, cooks, utility employees, pantry employees, bartenders, waiters, waitresses, bus helpers, porters and cashiers employed by Respondent at its Detroit place of business; but excluding guards and supervisors as defined in the Act.

Since approximately 1957, the Union has been the exclusive collective-bargaining representative of the employees in the unit and since that year the Union has been recognized by the Respondent as the exclusive collective-bargaining representative of the unit by virtue of its being signatory to a series of collective-bargaining agreements, the most recent of which was effective by its terms from March 1, 1988, to February 28, 1991.

At all times since 1957, the Union, by virtue of Section 9(a) of the Act, has been and is now the exclusive collective-bargaining representative of the employees employed by the Respondent in the above-described unit for purposes of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment.

B. *The Violations*

Since about August 25, 1992, the Respondent has failed and refused to transmit dues moneys which it deducted from the payroll checks of unit employees to the Union.

Since about January 13, 1993, the Respondent ceased operations and has failed and refused to bargain with the Union over the effects of closing the Detroit, Michigan facility on unit employees.

Since about December 28, 1992, the Respondent has failed and refused to pay earned wages and vacation benefits to unit employees as provided by the expired collective-bargaining agreement.

The foregoing acts and conduct relate to mandatory subjects of collective bargaining and the Respondent engaged in these acts and conduct without prior notice to the Union and without affording the Union an opportunity to bargain, and thereby violated Section 8(a)(1) and (5) and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

CONCLUSIONS OF LAW

1. By failing and refusing to transmit the dues moneys deducted from the payroll checks of unit employees to the Union, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act.

2. By ceasing operations and failing and refusing to bargain with the Union concerning the effects of closing the Detroit, Michigan facility on unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 8(d), and Section 2(6) and (7) of the Act.

3. By failing and refusing to pay earned wages and vacation benefits to unit employees as provided by the agreement, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(1) and (5) by failing and refusing to transmit the dues moneys it deducted from the payroll checks of unit employees to the Union, we shall order the Respondent to transmit these dues moneys to the Union with interest in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

To remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the closing of its Detroit facility, we shall order it to bargain with the Union, on request, concerning the effects of that decision.

To ensure that meaningful bargaining occurs and to effectuate the policies of the Act, the Respondent shall be ordered to pay its employees backpay at the rate of normal wages when last in the Respondent's employ from 5 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on the effects on unit employees of the closing of its Detroit, Michigan facility; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the subsequent failure of the Union to bargain in good faith. In no event shall the sum paid to any of these employees exceed the amount the employees would have earned as wages from the date on which the Respondent closed its Detroit, Michigan facility to the time the employee secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however that in no event shall this sum be less than these employees would have earned for a 2-week period at a rate of their normal wages when last in the Respondent's employ. See *Transmarine Corp.*, 170 NLRB 389 (1968). Interest on all sums shall be paid in the manner prescribed in *New Horizons for the Retarded*, supra. In view of the closing of its Detroit, Michigan facility, the Respondent shall be required to mail copies of the Board's notice to all unit employees.

Having found that the Respondent has violated Section 8(a)(1) and (5) by failing and refusing to pay earned wages and vacation benefits to unit employees as provided in the collective-bargaining agreement, we shall order the Respondent to make whole all unit employees adversely affected by these actions for losses incurred by virtue of these actions in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest on any amount due paid in the manner prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Normandie on the Park, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to transmit the dues moneys it deducted from the payroll checks of unit employees to the Union.

(b) Failing and refusing to bargain with the Union over the effects of closing the Detroit, Michigan facility on unit employees.

(c) Failing and refusing to pay earned wages and vacation benefits to unit employees as provided by the expired collective-bargaining agreement. The bargaining unit is:

> All chefs, night cooks, broilers, cooks, utility employees, pantry employees, bartenders, waiters, waitresses, bus helpers, porters and cashiers employed by Respondent at its Detroit place of business; but excluding guards and supervisors as defined in the Act.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Transmit the dues moneys deducted from the payroll checks of unit employees to the Union.

(b) On request, bargain in good faith with the Union over the effects of closing the Detroit, Michigan facility on unit employees, reduce to writing any agreement reached as a result of such bargaining, and pay limited backpay in the manner set forth in the remedy section of this Decision and Order, with interest.

(c) Make whole the unit employees adversely affected by these actions for any loss of earnings and vacation benefits suffered as a result of the Respondent's unilateral changes in the manner provided in the remedy section of this Decision and Order.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Mail signed and dated copies of the attached notice marked "Appendix"[2] to all employees employed by the Respondent at the Detroit, Michigan facility at the time the Respondent ceased operations at that facility at their last known address. Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt and if appropriate shall also be posted and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 15, 1993

James M. Stephens,	Chairman
Dennis M. Devaney,	Member
John Neil Raudabaugh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Local 24, Hotel Employees and Restaurant Employees International Union, AFL–CIO as the exclusive collective-bargaining representative of employees in the bargaining unit about the effects of the closing of our facility in Detroit, Michigan, on the unit employees. The appropriate bargaining unit includes:

> All chefs, night cooks, broilers, cooks, utility employees, pantry employees, bartenders, waiters, waitresses, bus helpers, porters and cashiers employed by us at our Detroit place of business; but excluding guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to transmit the dues moneys deducted from the payroll checks of unit employees to the Union.

WE WILL NOT fail and refuse to pay earned wages and vacation benefits to unit employees as provided by the expired collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL transmit the dues moneys deducted from the payroll checks of unit employees to the Union.

WE WILL, on request, bargain in good faith with the Union over the effects of closing the Detroit, Michigan facility on unit employees, reduce to writing any agreement reached as a result of such bargaining, and

pay limited backpay as required by the National Labor Relations Board, with interest.

WE WILL make whole the unit employees adversely affected by these actions for any loss of earnings and vacation benefits suffered as a result of our unilateral changes as provided in the collective-bargaining agreement.

NORMANDIE ON THE PARK, INC.